IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FOURTH DAY OF OCTOBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

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WRIT PETITION NO : 22823 of 2005

Between:

Chikati Nehru, S/o. Krishnaiah,
R/o. Mallayagudem Village,

Chintalpudi Mandal, West Godavari District.

..... PETITIONER

AND

1. The Collector/ District Election Authority,

West Godavari District, Eluru.

2. The Election Officer, Pothunuru PACS,

Pothunuru, Chintalpudi Mandal,
West Godavari District.

3. Pothunuru PACS, Pothunuru,

Chintalpudi Mandal, West Godavari District.

Rep by its Secretary.

4. N. Satyanarayana, S/o. Krishnaiah,

Sivapuram Village, Chintalpudi Mandal,

West Godavari District.

...RESPONDENTS

* * *

ORDER:

The petitioner questions the acceptance of nomination of the 4th respondent in respect of Ward No.10 of the 3rd respondent society by the second respondent on the ground that the 4th respondent is due and payable a sum of Rs.50,000/- and Rs.68,782/- towards interest thereon, making a total of Rs.1,18,782/-as per the audit report for the year 2004-2005.

2. It is also stated that the Secretary of the Pothunuru PACS also issued a notice dated 20.09.2005 to the 4th respondent giving seven days time to pay the said amount or else the property of the 4th respondent will be attached and sold for recovery of the said due amount. It is further stated that on filing of nomination paper by the 4th respondent on 18.10.2005, petitioner filed an objection petition on 19.10.2005 requesting to reject the nomination of the 4th respondent for Ward No.10 on the ground of disqualification. Section 21-A of the A.P. Cooperative Societies Act, deals with the disqualification of the membership of a committee. Under Section 21-A (b) no person shall be eligible for being chosen as and for being, a member of the committee, if he is in default in payment of any amount due in cash or kind to the society or any other society for such period as may be prescribed or is a delegate of a society which is defunct or which is in default as aforesaid.

3. Learned counsel for the petitioner contended that as the 4th respondent is defaulted in payment of amounts to the society the nomination of the 4th respondent is invalid. I am unable to accept the said contention on the ground that the 4th respondent has not obtained any loan in cash or obtained any material in kind making him liable to pay the same to the society and therefore it cannot be said that he is defaulter of payment of the said amounts. Therefore,

Section 21-A (b) does not apply to the instant case. But, I am of the opinion that Section 21-A(c) applies to the instant case. Under Section 21-A(c) there is a disqualification for membership of committee from contesting the election if any amount is due under a decree, decision, award or order is passed pending recovery under this Act against the petitioner.

4. In the instant case, merely because the audit pointed out that the 4th respondent has misappropriated certain amount, he is not eligible for contesting in the elections to the Managing Committee. No show cause notice is issued on the 4th respondent, no enquiry has been made, no order is passed fixing his liability that he misappropriated the funds of the society and therefore it is said that the alleged misappropriation of funds has not been decided. In view of the aforesaid observations, I do not see any reason to interfere with the action of the Election Officer in accepting the nomination of the 4th respondent.

5. Accordingly, the writ petition is dismissed. No costs.

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V.ESWARAIAH, J.

Date: 24th October 2005

BSB